

HOUSE BILL 2050
By DeBerry L

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 4, Part 10, relative to taxes on cigarettes
and tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by deleting §§ 67-4-1001 through 67-4-1024, § 67-4-1027, § 67-4-1029, and § 67-4-1030 and by substituting instead the following:

§ 67-4-1001. As used in this act:

(1) "Cigar" includes any roll of tobacco, for smoking, irrespective of the tobacco being flavored or adulterated, or mixed with other ingredients, where such a roll has a wrapper made chiefly of tobacco, except "cigar" does not include rolls of tobacco for smoking herein defined as "cigarettes";

(2) "Cigarette" means and includes all rolled, shredded, or cut tobacco, or any substitute therefor, wrapped in paper, or substitute therefor, and all rolled, shredded or cut tobacco, or any substitute therefor, wrapped in homogenized tobacco wrapper, and being within customary cigarette sizes and marketed in cigarette type packages;

(3) "Cigarette distributor" means any person, whether located within or outside of the state, other than a cigarette retail dealer, who sells or distributes cigarettes within or into the state. Such term shall not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer with a valid permit under 26 U.S.C. § 5712, if such person sells or distributes cigarettes in Tennessee only to licensed cigarette distributors, or to an export warehouse proprietor or another cigarette manufacturer with a valid permit under 26 U.S.C. § 5712;

(4) "Cigarette importer" means any person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution;

(5) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette;

(6) "Cigarette retail dealer" means any person, whether located within or outside of the state, who sells or distributes cigarettes to a consumer in the state;

(7) "Commissioner" means the commissioner of revenue;

(8) "Dealer" or "distributor" has the exact same meaning as "person" herein defined;

(9) "Department" means the department of revenue;

(10) "Drop shipment plan or system" means any device whereunder a manufacturer or sales agency or drop shipment depot ships cigarettes or tobacco products to points in the state to be billed or collected for by some person other than the manufacturer or sales agency, or drop shipment depot, or person shipping such products;

(11) "Licensed," when used with reference to cigarette manufacturer, cigarette distributor, cigarette importer, tobacco product manufacturing distributor, tobacco product distributor, or tobacco product wholesale dealer and jobber, means only those persons who hold a valid and current license issued under § 67-4-1015 for the type of business being engaged in. When the term "licensed" is used before a list of entities, such as "licensed cigarette manufacturer, cigarette distributor, and cigarette importer", such term shall apply to each entity in such list;

(12) "Tobacco product manufacturing distributor" means any person, with a plant located in this state, engaged in the business of manufacturing or processing consumable tobacco products, taxed by this part;

(13) "Nonresident" means any "person" who is not a bona fide domiciliary of this state and/or who maintains no plant, warehouse, or other cigarette or tobacco product storage facility in this state;

(14) "Person" means and includes every individual, firm, association, joint-stock company, syndicate and corporation;

(15) "Possess" means to have in one's actual and physical control, or to have the exclusive detention and control of, to own or be entitled to, or to have responsibility for the storage of in the capacity of a warehouseman;

(16) "Resident agent" means a resident of this state, designated in writing by the commissioner, to sell unaffixed revenue stamps as provided for in this part;

(17) "Tobacco product retail dealer" means each tobacco vending machine, place, store, booth, concession, truck or vehicle, or person that in any way sells or makes available tobacco products directly to the ultimate consumer;

(18) "Sale" means, in addition to its usual meaning, any sale, use, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever;

(19) "Stamp" means the impression, device, stamp, label or print manufactured, printed or made as prescribed by the commissioner that evidences payment of the tax on cigarettes under this part;

(20) "Tobacco product distributor" means any person who receives, purchases, sells or otherwise handles tobacco products as a secondary wholesaler and who acquires all that person's tobacco products on which, prior to receipt by the person, the tobacco tax required by Tennessee and any other state has been previously paid by a Tennessee wholesaler, and who sells or otherwise makes available such tobacco products to retailers in this and perhaps other states at a wholesale price for the purpose

of resale to the consumer;

(21) "Tobacco manufacturer's warehouse" means any warehouse, building or structure or space therein, whether publicly or privately owned, leased or rented, where any tobacco products are stored as a function of the distribution of such products, but are maintained separate from the manufacturer's operation, and where title to and control of distribution of the tobacco products stored therein remain with the manufacturer or processor;

(22) "Tobacco products" means cigars, manufactured tobacco and snuff, but not cigarettes and not tobacco produced and processed by the grower for the grower's own use and not for sale;

(23) "Vending machine" means any money-in-the-slot device used for the automatic merchandising of cigarettes or tobacco products, and each such machine shall be considered as a separate retail dealer;

(24) "Wholesale cost price" means the manufacturers' and/or processors' actual sales price of any tobacco product delivered to Tennessee dealers, exclusive of any discounts, rebates, allowances, or the privilege tax herein imposed; and

(25) "Tobacco product wholesale dealer and jobber" means any person who maintains wholesale facilities in one (1) or more permanent locations, and engages in the business of receiving, storing, purchasing, selling at wholesale only, importing tobacco products on which the tax has not been paid, and otherwise handling tobacco products for resale at a wholesale price only to other licensed tobacco product wholesale dealers and jobbers, or tobacco product distributors or retail dealers as defined herein, but does not sell tobacco products directly to the ultimate consumer.

§ 67-4-1002. Every cigarette distributor and every dealer or distributor of tobacco products herein defined shall pay to the department for exclusive state purposes, taxes, in

addition to all other taxes or fees, for the privilege of selling cigarettes and tobacco products in this state.

§ 67-4-1003.

(a) The tax imposed under this part is declared to be a levy on the consumer, and the consumer shall be liable therefor and subject to the incidence thereof.

(b) The persons described in § 67-4-1002 shall add the amount of taxes levied under this part to the price of cigarettes or other tobacco products, and such person may state the amount of the taxes separately from the price of such cigarettes or tobacco products on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes or tobacco products.

(c) The provisions of this section shall in no way affect the method of collection of cigarette or tobacco taxes as now provided by existing law.

§ 67-4-1004.

(a) The rate shall be ten (10) mills on each cigarette.

(b) In addition to the tax provided in subsection (a), every cigarette distributor shall pay an enforcement and administration fee to the department of five hundredths of a cent (\$.0005) per pack of cigarettes for sale in Tennessee. The fee shall be collected from each cigarette distributor upon the purchase of tax stamps from the commissioner.

§ 67-4-1005. The rate on all tobacco products, including, but not limited to, cigars, cheroots, stogies, beedies, bidis, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute therefor, shall be six and six-tenths percent (6.6%) of the wholesale cost price.

§ 67-4-1006.

(a)

(1) The tax herein imposed on cigarettes shall be paid by the purchase of

stamps from the commissioner of such design or denomination as may be prescribed by the commissioner.

(2) Tax stamps shall be applied only by a licensed cigarette distributor and shall be applied to each package of cigarettes sold or distributed within Tennessee.

(3) Only licensed cigarette distributors may purchase or obtain cigarette stamps.

(4) Cigarette distributors may apply stamps only to cigarette packages that they have received directly from a licensed cigarette manufacturer or cigarette importer.

(5) In lieu of tax stamps, the commissioner shall provide other means by which tax applicable to products other than cigarettes shall be paid.

(b)

(1) The commissioner is empowered to appoint agents to sell unaffixed tax stamps as herein required.

(2) Agents appointed to sell revenue stamps may be required to execute bond with a solvent surety company, qualified to do business in the state, as surety thereon, payable to the state and conditioned to faithfully perform the duties imposed upon them, and to faithfully account for and promptly pay to the state any and all sums due the state by virtue of their appointment, and such other reasonable conditions as the commissioner may require.

(3) Cigarette distributors licensed under this part and those persons authorized to pay tax on tobacco products by some means other than through the purchase of stamps shall be required to execute bond in such amount as may be determined by the commissioner.

(4) Licensed cigarette distributors shall be permitted to purchase revenue stamps by executing bond with a solvent surety company qualified to do business in this state, in an amount of one hundred ten percent (110%) of the cigarette distributor's estimated tax liability for thirty (30) days, but not less than two thousand dollars (\$2,000), and conditioned upon such cigarette distributor paying all taxes due the state arising hereunder. This form of payment is in lieu of cash or its equivalent. Payment for each month's liability shall be due on or before the twenty-fifth (25th) day of each month including Sundays and holidays. Default in the bonding and payment provisions by any cigarette distributor may result in the revocation of the person's privilege to purchase revenue stamps except for cash for a period up to twelve (12) months, in the discretion of the commissioner.

(5) Cigarette distributors are in no way authorized to sell or otherwise transfer stamps not affixed to cigarettes.

(6) Violation of this section may result in suspension or revocation of the agency appointment or of the cigarette distributor's license. The procedure for suspension or revocation shall be upon a show cause petition, the procedure to be as set out in § 67-4-1021.

§ 67-4-1007. Any person who shall falsely and fraudulently make, forge, alter or counterfeit a stamp or stamps so prescribed by the commissioner, or who shall cause or procure to be falsely or fraudulently made, forged, altered, or counterfeited such stamps, or make, cause to be made, or attempt to procure a counterfeit stamp, device or equipment which may be used alone, or in conjunction with some other device or equipment, for the purpose of fraudulently making a counterfeit stamp or tax indicia, or who shall knowingly and willfully utter, publish, pass or tender as true, any false, altered, forged, or counterfeited stamps prescribed by

this chapter, or who shall reuse any stamp previously affixed, commits a Class E felony.

§ 67-4-1008. The commissioner is hereby empowered to allow and make refunds for tax revenue stamps purchased from the commissioner or the commissioner's agent, upon submission of a written claim substantiated by such evidence as the commissioner may require to establish that:

(1) The revenue stamps have been returned to the department and are unused;

or

(2) The stamps have been cancelled by a cigarette distributor licensed by the commissioner on unused or unsalable products and returned to the manufacturers.

§ 67-4-1009.

(a) For the purpose of compensating the dealer or distributor of tobacco products in accounting for and remitting the tax and for the risk of loss and other expenses involved, the dealer shall be allowed two percent (2%) of the tax as the dealer's compensation, if the tax is not delinquent or deficient when paid.

(b) The commissioner is empowered to allow any cigarette distributor a discount of an amount not to exceed four and fifteen hundredths percent (4.15%) of the value of the stamps as compensation for selling and affixing the stamps to cigarettes.

(c) The compensation and/or discount provided for in subsections (a) and (b) above shall not apply to the fee imposed by § 67-4-1004(b).

§ 67-4-1010.

(a) The supervision and collection of the tax imposed herein shall be under the direction of the department.

(b) The commissioner is granted full power and authority to adopt such reasonable rules and regulations not in conflict with this part, or other statute, as the commissioner may deem necessary to enforce the collection of the tax herein levied.

Such rules and regulations, before being effective, shall be approved by the attorney general and reporter.

(c) In enforcing the provisions of this part, the commissioner shall consider the cost and effectiveness of administration, and endeavor to administer this part in the most cost efficient manner.

§ 67-4-1011.

(a)

(1) The commissioner is further authorized and empowered to prescribe the methods to be used by persons in recording purchases and sales of cigarettes and tobacco products and purchases and consumption of tax stamps.

(2) The commissioner is further authorized and empowered to require persons selling, distributing, or dealing in cigarettes and tobacco products to file such reports with the department in the manner and at such times as the commissioner may deem necessary in carrying out the provisions of this part.

(b)

(1) Each cigarette manufacturer, cigarette importer, cigarette distributor, and cigarette retail dealer shall maintain copies of invoices or equivalent documentation for, or itemized for, each of its facilities for each transaction (other than a retail transaction with a consumer), involving the sale, purchase, transfer, consignment or receipt of cigarettes. The invoices or documentation shall show the name and address of the other party and the quantity by brand style of the cigarettes involved in the transaction.

(2) Records required under this subsection shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized

personnel of the department. With the commissioner's permission, persons with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the commissioner or the commissioner's designee.

(3) The records required by this subsection shall be retained for a period of five (5) years from the date of the transaction.

(4) The commissioner and the commissioner's designees and the United States Secretary of the Treasury and the Secretary's designee, upon request, shall have access to records required under this section and reports required by subsection (c). The department at its sole discretion may share the records and reports required by such provisions with other law enforcement officials of the federal government or other states.

(c)

(1) Cigarette manufacturers and cigarette importers shipping cigarettes into or within this state shall file a monthly report with the commissioner setting forth the quantities of cigarettes, by brand style and transaction, distributed or shipped into the state or between locations in the state during the reporting period and the name and address of each person to whom such products were distributed or shipped. Such information shall be itemized or submitted separately for each place of business.

(2) Public access to reports submitted by cigarette manufacturers or cigarette importers under this subsection shall be provided under the procedures established by §§ 10-7-503 — 10-7-512. In no case, however, shall information about quantities of cigarettes by brand be released to anyone other than those

permitted access to records and reports under subdivision (b)(4).

(d) In any case where a person cannot produce evidence of sufficient stamps purchased or other payment of the tax imposed to cover all of any cigarettes or tobacco products received, it may be assumed that such products were disposed of without having either the proper stamps affixed or the tax paid thereon.

(e)

(1) Every common carrier transporting cigars, cigarettes, manufactured tobacco or snuff in this state shall keep a complete record of all such products handled in each transaction, separately, and shall show the transportation of such products, both interstate and intrastate.

(2) Every common carrier in this state shall give and permit the commissioner free access to such books and records, and furnish such information and reports as the commissioner may require.

(3) Any person violating this subsection commits a Class A misdemeanor.

§ 67-4-1012.

(a) Every cigarette retail dealer and every person required to be licensed under this part shall permit the commissioner or the commissioner's authorized agent or representative to inspect at any time all cigarettes, tobacco products, invoices, books, papers and memoranda, including the general books, both operating and proprietary ledgers, as may be deemed necessary by the commissioner in ascertaining whether or not the tax levied under the provisions of this part has been paid, or in determining the amount of such tax due.

(b) No cigarette retail dealer or person required to be licensed under this part shall be permitted to claim any part of the premises whereon the person is engaged in business, to be exempt from inspection as being the person's dwelling or home, the

person's application for license under this part being declared an express waiver of such claim.

(c) In any case where the commissioner or his duly authorized agent, or any police officer of Tennessee, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this part, the commissioner, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(d) All persons failing to permit the examination of cigarettes, tobacco products, invoices, books and other memoranda, including the general books, both operating and proprietary ledgers, or interfering with the orderly inspection or examination thereof, or failing to file such reports as may be required by the commissioner, commit a Class A misdemeanor.

§ 67-4-1013. Any duly authorized representative, agent or employee of the department who has been designated by the commissioner to enforce the provisions of this part is authorized and empowered to execute search warrants and perform all acts incident thereto, in the same manner as search warrants may be levied by sheriffs and other peace officers.

§ 67-4-1014.

(a) Inspectors, agents, representatives or officers appointed by the commissioner shall be cloaked with and have the duty, power and authority as police officers to enforce the provisions of this part and in the illegal traffic of unstamped cigarettes or tobacco products upon which the tax imposed under this part has not been paid.

(b) The highway patrol shall likewise have concurrent authority to assist in the enforcement of the provisions of this part and in the illegal traffic of unstamped cigarettes or tobacco products upon which the tax imposed under this part has not been paid.

(c)

(1) Any duly authorized representative or employee of the department who has been specifically designated by the commissioner to enforce the provisions of §§ 67-4-1019--67-4-1021, is hereby authorized and empowered to go armed, or carry a pistol while on active duty engaged in enforcing the provisions of §§ 67-4-1019--67-4-1021.

(2) Any such duly authorized representative or employee of the department who has been designated by the commissioner to enforce the provisions of this part is hereby authorized and empowered to execute search warrants and perform all acts incident thereto, in the same manner as search warrants may be levied by sheriffs and other peace officers.

§ 67-4-1015.

(a) Every cigarette manufacturer, cigarette importer, and cigarette distributor, and every person engaged in the business of selling, distributing or handling tobacco products in this state and required to be licensed pursuant to the provisions of this part, shall, on or before May 31 in each year, file with the commissioner an application for a license for each such activity engaged in by the applicant authorizing the person to engage in such business. Any person commencing business subsequent to May 31, shall apply for such license prior to or concurrent with the commencement of business.

(b) The application for license shall be made on blanks furnished by the commissioner. The application blanks shall show the following:

(1) Name of applicant;

(2) Street address of applicant;

(3) City or town in which applicant's principal place of business is to be located;

(4) Kind or nature of business to be conducted;

(5) Sufficient information to demonstrate that the applicant has complied with all pertinent registration and tax statutes, as provided by law, to include, but not be limited to, the sales and use, business, franchise and excise taxes. The form and content of the information required by this subdivision shall be specified by the commissioner; and

(6) Such other and further information as the commissioner may require. If the applicant is a firm, partnership, or association, the application shall state the name and address of each of its members. If the applicant is a corporation, the application shall state the names and addresses of its officers and the name and address of any person who owns, directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the corporation.

(c) No license to engage in business as a cigarette manufacturer, cigarette importer, or cigarette distributor may be granted, maintained or renewed if the applicant, or any combination of persons owning directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the applicant:

(1) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

(2) Had a license issued under this part revoked by the department within the past two years;

(3) Has been convicted of a crime relating to stolen or counterfeit cigarettes;

(4) Is a cigarette manufacturer or importer that is neither (i) a participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement" as defined in § 47-31-102; nor (ii) in full compliance with §§ 67-4-2601 — 67-4-2606 and § 47-31-103;

(5) Has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. Section 1681(a); or

(6) Has imported or caused to be imported into the United States, or manufactured for sale or distribution in the United States, any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Section 1331, et. seq.).

(d)

(1) Application for licenses shall be accompanied by the following fees:

(A) Tobacco product manufacturing distributor--Twenty dollars (\$20.00) for each plant or processing location;

(B) Tobacco manufacturer's warehouse--Twenty dollars (\$20.00) for each storage warehouse;

(C) Tobacco product wholesale dealer and jobber--Twenty dollars (\$20.00) for each separate sale warehouse;

(D) Tobacco product distributor--Ten dollars (\$10.00) for each secondary wholesale location where tobacco products are received or ordered for delivery to other than the ultimate consumer;

(E) Cigarette manufacturer--Twenty dollars (\$20.00) for each plant or processing location within the state, or if no such plant or processing location is within the state, twenty dollars (\$20.00);

(F) Cigarette importer--Twenty dollars (\$20.00) for each storage warehouse within the state, or if no such warehouse is within the state, twenty dollars (\$20.00);

(G) Cigarette distributor--Twenty dollars (\$20.00) for each separate sale warehouse within the state, or if no such warehouse is

within the state, twenty dollars (\$20.00);

(2) Upon receipt of the above application, together with the fee imposed by this subsection, the commissioner, upon the commissioner's approval of the application, shall issue within a reasonable time to the applicant the necessary licenses to engage in the business named therein.

(A) Each such license shall expire on May 31 of each year.

(B) If the license is mutilated, lost, or destroyed, a duplicate shall be issued upon application, accompanied by a fee of one dollar (\$1.00).

(e) In addition to any other penalty provided by law, any person who engages in any business or activity for which a license is required under the provisions of this part without obtaining a license to do so within thirty (30) days after entering business, or who fails to file an application for renewal of a license within thirty (30) days after the expiration of such license, is subject to a specific penalty in the amount of fifty percent (50%) of the license fee for each month or part of a month during which the activity or failure continues, except that this penalty may not exceed the cost of the license. In addition to this specific penalty, the commissioner may impose a penalty of not more than two hundred fifty dollars (\$250) per day for each day during which the activity or failure occurs or continues. The discretionary penalty herein provided may also be imposed upon a person to whom a license has been issued if the person continues to engage in the business or activity after receiving notice the license is revoked or suspended by the commissioner.

(f) Persons duly and properly licensed to sell tobacco products in this state may not knowingly sell, lend or exchange such products to, with or from any person required to be licensed who is not so licensed, or who is improperly licensed.

(g)

(1) A cigarette manufacturer or cigarette importer may sell or distribute cigarettes to a person located or doing business within this state only if such person is a licensed cigarette importer or cigarette distributor. A cigarette importer may obtain cigarettes only from a licensed cigarette manufacturer. A cigarette distributor may sell or distribute cigarettes to a person located or doing business within this state only if such person is a cigarette retail dealer or a licensed cigarette distributor. A cigarette distributor may obtain cigarettes only from a licensed cigarette manufacturer, cigarette importer, or cigarette distributor. A cigarette retail dealer may obtain cigarettes only from a licensed cigarette distributor.

(2) Any person who is doing business as both a cigarette distributor and a cigarette retail dealer shall maintain separate areas for stamped and unstamped product.

(h)

(1) The commissioner, in the commissioner's discretion, is empowered to require all applicants for a cigarette distributor license, and all applicants for a license to engage in the business of selling, distributing or handling tobacco products, as required by subsections (a) and (b), including, but not limited to, persons licensed to engage in the business of a tobacco manufacturer's warehouse as defined by this part, to execute bond with a surety company qualified to do business in this state as surety thereon, payable to the state of Tennessee and conditioned upon the licensee paying the tax on, or in the case of cigarettes affixing tax stamps to, all packages or parcels of cigarettes or tobacco products used, sold, distributed or handled by such licensee and/or accounting for the distribution of such foreign stamped or other unstamped cigarettes

authorized to be possessed under this part.

(2) In lieu of a corporate surety on the bond required by this subsection, the commissioner may allow the applicant to secure such bond by depositing collateral in the form of a certificate of deposit as accepted and authorized by the banking laws of the state of Tennessee, which has a face value equal to the amount of the bond. Such collateral may be deposited with any authorized state depository designated by the commissioner. Interest on any deposited certificate of deposit shall be payable to such applicant who has deposited it as collateral, or to such person as the applicant or the certificate may direct.

(i) No license so issued shall be transferable and a separate license shall be required for each separate place of business and shall be prominently displayed in the place of business operated by the person to whom such license is issued. If the applicant does not have a place of business in Tennessee, the license shall be issued for such applicant's principal place of business, wherever located. A licensee shall notify the department within thirty (30) days in the event that it changes its principle place of business.

(j) Nonresidents selling and/or delivering cigarettes or tobacco products within Tennessee shall be privileged to obtain licenses, purchase and affix stamps, pay tax, obtain statutory discounts and perform all other acts relating thereto in a like manner and under the same conditions as Tennessee resident licensees; provided, that similar privileges are afforded to residents of this state in the applicant's state of domicile.

§ 67-4-1016.

(a)

(1) In addition to any civil or criminal penalty provided by law, the commissioner may revoke any license issued under this part upon the failure of

the licensee to pay the tax or taxes herein imposed, or for the violation of any provision hereof or any rule or regulation promulgated by the commissioner under the authority vested in the commissioner.

(2) In addition to any civil or criminal penalty provided by law, the commissioner shall revoke the license or licenses issued under this part of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in § 67-4-1015(c).

(3) The commissioner shall, before revoking any license, notify the licensee, by letter addressed and mailed to the last known address of the licensee, and shall afford the licensee an opportunity to be heard in person or by counsel in reference thereto. This notice shall be mailed at least ten (10) days prior to a date set for hearing.

(4) Pending final determination of the notice or hearing, the licensee may continue to buy, sell and distribute cigarettes or tobacco products. The commissioner may require bond with good and solvent surety in such amount as may be deemed necessary to protect the state's interest.

(5) The commissioner shall have the power to issue subpoenas as provided in § 67-4-1017.

(6) The hearing authorized under this subsection shall be held and conducted in accordance with the procedure as outlined under the provisions of § 67-4-1021.

(b)

(1) At such time and place of the hearing so designated, or at any time and/or place to which the commissioner, or the commissioner's duly authorized agent, representative or employee, may adjourn such hearing, the matters under

consideration shall be gone into, and, after a full hearing the commissioner, or the commissioner's duly authorized agent, representative and/or employee, shall make such finding as, in the commissioner's opinion, the facts may warrant, and if the commissioner determines that the licensee has failed to pay the tax or taxes imposed by the terms of this part when due, or has violated any rule or regulation promulgated by the commissioner under the authority vested in the commissioner by the terms of this part, or has been guilty of a violation of any of the provisions of this part, as charged, the license of such licensee shall be revoked; otherwise, the charges shall be dismissed, and the license shall continue in force unimpaired; provided, that even though the commissioner finds that the licensee is guilty of the delinquency charged, but further finds that such violation by the licensee was unintentional or inadvertent, the commissioner, or the commissioner's duly authorized agent, representative or employee, may suspend the license of the licensee for a period of not exceeding thirty (30) days; or may, if the licensee shall not theretofore have been found guilty of any delinquency by the commissioner under this part, or the dereliction charged be remedied by the licensee at or prior to the time of the hearing, dismiss the proceeding and charges against the licensee upon the payment by the licensee of all costs and fees incurred in holding and having the hearing.

(2) The hearing authorized under this subsection shall be held and conducted in accordance with the procedure as outlined under the provisions of § 67-4-1021.

(c) The ruling or order issued by the commissioner with reference to the revocation or suspension of any license may only be reviewed in the manner and in accordance with the procedure authorized under the provisions of § 67-4-1021.

§ 67-4-1017.

(a) The commissioner has the power to issue subpoenas in the name of the state of Tennessee requiring the attendance of such witnesses as may be designated therein at the place or places, at either the office of the commissioner at Nashville, or at any place in the county in which the licensee has the licensee's place of business, and at such time or times as may be designated in such subpoena.

(b) The licensee has the right to require the commissioner to issue any such subpoena requiring the attendance of any such witnesses as may be desired by the licensee.

(c) All such subpoenas shall be served by the sheriff, or any deputy, of the county where the same is directed, and such sheriff or deputy shall be entitled to the same fees for serving such subpoenas as in the case of serving subpoenas in civil cases from any court of record.

(d) The commissioner, or any authorized agent, representative or employee, is empowered to administer oaths to any person so summoned or to any person giving evidence at the hearing.

(e) Any person so summoned shall give all such evidence relevant to the matter under investigation as may be required by the commissioner or the commissioner's authorized agent, representative or employee, or as may be required by the licensee.

(f) The usual fees and mileage expenses allowed witnesses in cases in a court of record shall be allowed any witnesses so summoned.

§ 67-4-1018.

(a) All witness fees, mileage expenses and all fees of sheriffs for serving any notices or subpoenas shall be taxed as costs by the commissioner, the commissioner's authorized agent, representative or employee.

(b) All costs and fees for witnesses and/or sheriffs shall be advanced or collected as provided in the case of witnesses attending upon cases in courts of record, and the service of subpoenas requiring their attendance and testimony.

(c) If, upon the hearing, the licensee shall be found by the commissioner, or the commissioner's authorized agent, representative or employee, to be guilty of the delinquency charged, all of the aforementioned costs shall be taxed and charged against the licensee, but if the charge against such licensee shall be dismissed, then such costs shall be paid by the commissioner out of the funds in the commissioner's hands collected under the provisions of this part, after approval by the commissioner, and shall be and constitute lawful expenditures hereunder.

§ 67-4-1019.

(a)

(1) Except as otherwise provided in this part, any tobacco products which are required to have Tennessee revenue stamps affixed thereto, and which are found any place in this state without the proper stamps affixed thereto, or without applicable Tennessee tobacco tax having been paid, as required herein, unless such products shall be in the possession of a person or firm currently licensed, qualified and authorized to possess such tobacco products, or unless they shall be in course of transit from and consigned to a person or firm currently licensed, qualified and authorized to possess such tobacco products, or in the possession of a common carrier complying with the provisions of this part, are declared to be contraband goods, and may be seized by the commissioner, the commissioner's agents or employees, or by any peace officer of this state authorized by the commissioner to do so.

(2) Duly licensed wholesale dealers and jobbers who in their normal

course of business receive from out of state untaxed tobacco products, may, upon written authorization from the commissioner, have such untaxed tobacco products in their possession for a period not to exceed twenty-four (24) hours, exclusive of Saturdays, Sundays and legal holidays, before being required to have proper stamps affixed thereto, or applicable Tennessee tobacco tax paid thereon.

(3) Under no condition may such tobacco products be sold, used or otherwise disposed of before having tax stamps affixed thereto or applicable tobacco tax paid thereon.

(4) All such tobacco products requiring tax to be paid thereon and found in the possession of any person shall be presumed to have been held by the person for more than twenty-four (24) hours unless proof can be shown to the contrary.

(5) The provisions of this section shall not apply to persons possessing no more than twenty (20) packages of twenty (20) cigarettes each, or cigars in an amount not exceeding fifty (50) cigars, or other tobacco products with retail value of not more than two dollars (\$2.00) which have been brought into the state by the person; and in all instances of possession in excess of the limited quantities enumerated, the foregoing provision for exception of any cigarettes, cigars or other tobacco products shall not be applicable and any and all such products, including those quantities excepted on which the applicable Tennessee tobacco tax has not been paid, shall be deemed to be contraband and may be seized as provided herein. Any consumer who brings into or possesses within this state more than twenty (20) packages of twenty (20) such cigarettes shall file with the department a report on or before the tenth day of the month following the receipt

or possession of such cigarettes in a form as the commissioner shall prescribe. Such report shall be accompanied by a remittance for the full amount of the tax applicable to such cigarettes; provided that by so filing and paying the tax, the consumer shall not be relieved of any criminal or civil penalties that may be applicable under this part.

(b)

(1) Every person who transports within this state cigarettes not bearing Tennessee revenue stamps or any other tobacco products upon which the Tennessee tax imposed herein has not been paid shall be presumed to be transporting such products in violation of the provisions of this part, and such products and any vehicles used to transport them shall be deemed contraband. Such products shall be confiscated and disposed of as provided for in this part. Such vehicles may likewise, in the discretion of the commissioner, be confiscated and disposed of as provided for in this part.

(2) This presumption may be rebutted by the person transporting the tobacco products; provided, that the person has in the person's actual possession invoices or delivery tickets for such products which shall show the true name and exact address of the consignor or seller, the true name and exact address of the consignee or purchaser, and the quantity and brands of such products so transported.

(3) If the tobacco products are consigned to or purchased by any person in Tennessee, such purchaser or consignee must be a person who is authorized by this part to possess such tobacco products in this state; and if the invoice or delivery ticket specifies that the tobacco products are to be delivered to any person in any other state or jurisdiction, such person must be authorized by the

laws of such other state or jurisdiction to receive or possess tobacco products on which the taxes imposed by such other state or jurisdiction have not been paid.

(4) The presumption provided for herein may not be overcome if the invoice or delivery ticket is false, or if the purchaser, as indicated by the name and/or address shown on the invoice or delivery ticket, is not authorized by the laws of the receiving state to possess such tobacco products.

(5) The commissioner or the commissioner's duly authorized agent is hereby authorized to take custody and retain any such products and any vehicle being used to transport them until the correctness of any invoices or delivery tickets provided for herein can be determined by the commissioner, either before or at a hearing, as provided for in this part.

(c) In addition to any other penalties provided for in this part, any person unlawfully transporting or unlawfully in possession of cigarettes or other tobacco products shall, in the discretion of the commissioner, be liable for a penalty of not more than twenty-five dollars (\$25.00) for each individual carton of cigarettes and not more than fifty dollars (\$50.00) for each individual box or carton of other tobacco products so transported or possessed by the person, the same to be collected as other tax and penalties.

(d)

(1) After qualifying with and receiving authorization from the commissioner, wholesale dealers and jobbers and tobacco product manufacturing distributors licensed under the provisions of this part may have in their possession tobacco products on which the Tennessee tax has not been paid to fulfill ordinary export requirements and to provide for their sale to armed forces installations, and veterans administration hospitals, where such products

are sold only to patients registered and admitted therein.

(2) To provide for its ordinary export requirements, and after qualifying and receiving authorization from the commissioner, a Tennessee licensed wholesaler dealer and jobber or tobacco product distributor servicing stores, vending machines or other retail businesses located in another state may possess, in storage warehouses in this state or in vehicles in the process of transporting, foreign stamped or other such tobacco products in an amount authorized by the commissioner if acquired in accordance with the requirements of this part (including, for cigarettes, in accordance with § 67-4-1015(g)) and which bear, if required by the commissioner, the tax stamps of the state in which the product is to be sold.

(3) The commissioner is hereby empowered, if the commissioner deems it necessary, to limit such authorizations by designating only a state or specified states from which these licensees may possess such foreign stamped or other unstamped products, and in what maximum quantity.

(4) Also, upon qualifying and receiving permission from the commissioner, any tobacco dealer licensed and domiciled in another state may obtain from a Tennessee licensed cigarette manufacturer, cigarette importer, wholesale dealer or jobber, or tobacco product distributor foreign stamped or other unstamped tobacco products and transport them to the dealer's business location in the foreign state, but such dealer must have in the dealer's possession an invoice showing the true name and exact address of the consignor or seller, the true name and exact address of the consignee or purchaser, the quantity and brands of the cigars or cigarettes transported, and any other information that the commissioner may require.

(e)

(1) Every person, as defined by this part (specifically including, but not limited to, persons licensed to engage in the business of a tobacco manufacturer's warehouse as defined by this part), authorized by this part to possess foreign stamped or other unstamped tobacco products, may be required to account for the distribution of such foreign or other unstamped products, and shall be unconditionally liable for the tax imposed by this part for each and every foreign or other unstamped tobacco product removed from inventory and not sold as above defined or exported from the state of Tennessee.

(2) Every person authorized by this part to possess foreign stamped or other unstamped tobacco products may, however, be permitted to reduce the person's inventory by the amount of any unstamped tobacco product loss due to theft occurring in connection with a breaking and entering upon the person's premises without being subjected to tax on such amount, if acceptable proof is supplied the department as soon as possible after the loss occurs reflecting that the theft was promptly reported to the proper law enforcement agency.

(3) The amount of inventory reduction acknowledged by the department as being supported by proof of loss satisfactory to the commissioner shall be evidenced by a certificate furnished to such person following receipt of required proof, and such certificate shall be retained by the person as authorization for it.

(f) The provisions of this section and sections 67-4-1020 through 67-4-1021 shall apply to tobacco products and to cigarettes. Accordingly, when used in this section or sections 67-4-1020 through 67-4-1021 –

(1) The term “tobacco products” shall be deemed to refer to tobacco products and cigarettes; and

(2) The term “wholesale dealers and jobbers” shall be deemed to include cigarette distributors and tobacco product wholesale dealers and jobbers.

(g) Notwithstanding any other provision of law:

(1) Except as provided in subdivisions (2) and (3), no person, other than a licensed cigarette manufacturer or cigarette importer, or a licensed cigarette distributor that receives unstamped cigarette packages directly from a licensed cigarette manufacturer or cigarette importer and holds such cigarettes in accordance with subdivision (3), shall hold an unstamped cigarette package.

(2) Any person who ships unstamped cigarette packages in or into this state other than to a licensed cigarette manufacturer, cigarette importer, or cigarette distributor shall first file with the department notice of such shipment. The preceding sentence shall not apply to any common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill, which states the quantity, source, and destination of such cigarettes.

(3) Any person transporting unstamped cigarette packages into or within this state shall carry, in the vehicle used to convey the shipment, invoices or equivalent documentation of the shipment for all cigarettes in the shipment. The invoices or documentation shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand of the cigarettes so transported.

(4) Cigarette distributors shall be permitted to set aside, without application of stamps, only such part of the cigarette distributor's stock that is identified for sale or distribution outside of this state; provided, that any such unstamped cigarettes shall be stored separately from stamped cigarette

packages. No unstamped cigarette packages shall be transferred by a cigarette distributor to another facility of the distributor within this state or to another person within this state.

(5) Any cigarette forfeited to this state pursuant to the provisions of this chapter shall be destroyed.

(6) Cigarette distributors located outside of this state shall apply stamps to all applicable cigarette packages before sending such packages into this state.

§ 67-4-1020.

(a)

(1) All manufactured tobacco products upon which all applicable tobacco taxes have not been paid and which are or shall be owned or possessed by any person in avoidance, evasion or violation of any of the provisions of this part, are declared to be contraband goods and the same may be seized by the commissioner, or any duly authorized representative, agent or employee of the department, without a warrant, and such goods shall be delivered to the department for sale at public auction to the highest bidder after due advertisement, except in the case of cigarettes, which shall be destroyed.

(2) The department, before delivering any of such goods so seized, shall require the purchaser to pay the applicable tax on any tobacco products, other than cigarettes, so seized.

(3) Proceeds of all such seizures shall be paid by the commissioner into the state treasury, and ten percent (10%) of such proceeds shall be set aside as expenses for the administration of this section.

(b) Any vehicle which may be used for transporting for the purposes of distribution, gift or sale of any unstamped tobacco products shall likewise be subject to

confiscation and sale in the same manner as above provided, unless such vehicle is being used to transport such products in a manner deemed lawful as otherwise provided in this part. Any unstamped tobacco products found in any vehicle, except vehicles lawfully engaged in transporting such unstamped products, shall be prima facie evidence that such were intended to be used for gift, sale or distribution.

(c) The provisions of this section shall likewise apply to any coin-operated vending machine in which any tobacco products are found, stored or possessed with the same bearing a counterfeit or bogus tobacco tax stamp or any unstamped tobacco products, such vending machine and tobacco products are hereby declared to be contraband property and shall be subject to confiscation and sale as herein provided for. Any such vending machine found containing such tobacco products with counterfeit or bogus stamps or containing any unstamped tobacco in such vending machine shall be prima facie evidence that it was there for gift, sale or distribution.

(d)

(1) Any tobacco products found, owned, stored or possessed by any person bearing a counterfeit or bogus tobacco tax stamp are likewise declared to be contraband property, and shall be subject to confiscation and sale or destruction as herein provided. Any such tobacco products shall be prima facie evidence that they were owned, stored or possessed for gift, sale or distribution.

(2) Likewise, any unstamped tobacco products found, owned, stored or possessed at the same place or at the same time with any other tobacco products bearing counterfeit or bogus tax stamps are likewise declared to be contraband property and shall be subject to confiscation and sale or destruction as herein provided. Such unstamped tobacco products shall be prima facie evidence that they were owned, stored or possessed for gift, sale or distribution.

(e)

(1) The possession of any counterfeit or bogus stamps, including any article, device, meter, mechanical or otherwise, that is used for the purpose of or in connection with the counterfeiting of tobacco tax stamps on tobacco products, or the unauthorized possession of a tobacco or cigarette stamp tax machine, meter, or ink which has been approved by the department for the use with the lawful tobacco tax stamps, is hereby declared to be contraband property.

(2) The same shall be subject to seizure and confiscation, and sale in the manner as other property herein provided.

(3) In addition to any additional penalties provided by law, any person violating the provisions of this subsection shall upon conviction be punished in accordance with the penalty prescribed under § 67-4-1007.

(f) Any money or coins found or recovered in any cigarette or tobacco vending machine, which machine has been ordered forfeited to the state of Tennessee under the provisions of this part, shall likewise be forfeited to the state of Tennessee and the same paid into the state treasury by the commissioner.

(g) If, incidental to a confiscation of contraband as defined herein, there is discovered any intoxicating liquor deemed to be held or transported illegally within the purview of § 57-3-411, § 57-9-201 or § 57-9-202, the confiscating officer is hereby empowered and required to seize such liquor, notwithstanding the fact that such officer may not otherwise be empowered to take such action under the provisions of § 57-3-411, § 57-9-201 or § 57-9-202. Any intoxicating liquor seized pursuant hereto shall be delivered promptly as provided by § 57-3-411, § 57-9-201 or § 57-9-202, as the same may be appropriate, to the alcoholic beverage commission for sale or disposition as contraband in accordance with provisions of title 57.

§ 67-4-1021.

(a) In all cases of seizure of any tobacco products or other property subject to forfeiture under the provisions hereof, the officer or other person making the seizure shall proceed as follows:

(1) Upon confiscation, or as soon thereafter as practicable, written notice shall be given by the department to the person from whom the confiscation was made, and to all others with a legal interest in the property confiscated who are either made known to the department or who, by a reasonable examination of public records of titles and liens, should have been discovered;

(A) The notice shall state: a description of the property confiscated, the reason for confiscation, the method for seeking recovery, the time limit for seeking recovery, and the result of failure to seek or obtain recovery by the designated method;

(B) Such notice may be by personal delivery or by mail, either of which may be made to the last known address of the interested party;

(2) All such property seized and confiscated under the provisions of this part shall be sold at public sale by the department of general services when the same has been turned over to it by the commissioner of revenue, as now authorized by law under title 12, chapter 2, part 2, except in the case of cigarettes, which shall be destroyed;

(3) In the case of any contraband property seized by any law enforcement officer of any incorporated municipality or of any county and turned over to the department of revenue for confiscation, there shall be paid to the municipality or to the county served by such officer fifty percent (50%) of the net proceeds thereof; and

(4) Any person claiming any property so seized as contraband goods may, within ten (10) days from the date of seizure, and after executing a bond for costs with one (1) or more good and solvent sureties in the sum of two hundred fifty dollars (\$250), made payable to the state of Tennessee, or upon executing a pauper's oath as required by law, file with the commissioner at Nashville a claim in writing, requesting a hearing and stating the person's interest in the articles seized;

(A) The commissioner shall set a date for hearing within ten (10) days from the day the claim is filed;

(B) The commissioner is empowered to subpoena witnesses and compel their attendance at hearings authorized hereunder;

(C) All parties to the proceeding, including the person claiming such property, shall have the right to have subpoenas issued by the commissioner to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing;

(D) All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of such proceeding.

(b) In any hearing convened upon proper petition of an interested party, the initial burden shall be upon the state to show by a preponderance of the evidence that the property in question was of such nature or was used in such manner as to be declared as contraband. Upon meeting this burden, the property shall be forfeited as provided by law unless the claimant shall prove that the claimant is nevertheless qualified under this part, or otherwise, to recover the property in question.

(c)

(1) In the event the ruling of the commissioner is favorable to the claimant, the commissioner shall deliver to the claimant the tobacco products or property so seized.

(2) If the ruling of the commissioner is adverse to the claimant, the sale or destruction of such contraband goods shall be by the department of general services as provided above.

(3) The expenses of storage, transportation, etc., shall be adjudged as a part of the cost of the proceeding in such manner as the commissioner shall fix.

(d) Pending any proceeding to recover any tobacco product, vending machine, vehicle, aircraft or boat seized hereunder, the commissioner may order delivery thereof to any claimant who shall establish the claimant's right to immediate possession thereof, and who shall execute, with one (1) or more sureties approved by the commissioner, and deliver to the commissioner, a bond in favor of the state of Tennessee for the payment of a sum double the appraised value thereof as of the time of the hearing; and conditioned further, that if the tobacco product, vending machine, vehicle, aircraft or boat is not returned at the time of hearing, the bond shall stand in lieu of and be forfeited in the same manner as such tobacco product, vending machine, vehicle, aircraft or boat.

(e)

(1) The commissioner may personally hold such hearings as the commissioner may deem proper.

(2) In addition thereto, the commissioner is authorized to designate a hearing officer who may hold such hearings in the place of and in the absence of the commissioner.

(3) Such hearing officer shall make findings of fact, conclusions of law and proposed order based thereon. If the commissioner concurs, the

commissioner shall issue the order; or the commissioner may, upon review of the record, make such findings, conclusions and issue such order as in the commissioner's discretion the record justifies.

(4) At all hearings provided for herein, the commissioner shall provide a stenographer or court reporter to take a stenographic record of the evidence adduced at such hearing. The claimant or protestant shall be entitled to a copy of the stenographic record, upon application therefor, and upon paying the reasonable cost thereof to be fixed by the commissioner.

(f) The action of the commissioner may be reviewed by petition for common law writ of certiorari, addressed to the chancery or circuit court of Davidson County, which petition shall be filed within ten (10) days from the date the order of the commissioner is made.

(g)

(1) Immediately upon the grant of the writ of certiorari, the commissioner shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause, which shall contain all the proof submitted before the commissioner.

(2) All defendants named in the petition desiring to make defense shall answer or otherwise plead to the petition within ten (10) days from the date of the filing of the transcript unless the time be extended by the court.

(h)

(1) The decision of the commissioner shall be reviewed by the circuit court solely upon the pleadings and the transcript of the proceedings before the commissioner, and neither party shall be entitled to introduce any additional evidence in the circuit court.

(2) The confiscated goods shall not be destroyed or sold pending such review, but shall be stored by the department until the final disposition of the case unless bond has been posted as elsewhere provided herein.

(i)

(1) Within the discretion of the commissioner, the claimant may be awarded possession of the confiscated goods (except in the case of cigarettes), pending the decision of the circuit court under the petition of certiorari; provided, that the claimant shall be required to execute a bond payable to the state of Tennessee in an amount double the value of the property seized, the sureties to be approved by the commissioner.

(2) The condition of the bond shall be that the obligors shall pay to the state, through the department, the full value of the goods or property seized, unless upon certiorari the decision of the commissioner shall be reversed and the property awarded to the claimant.

(j)

(1) Either party dissatisfied with the judgment or decree of the circuit court may, upon giving bond as required in other suits, appeal and have a reexamination, in the appellate court, of the whole matter of law and fact appearing in the record.

(2) When any such appeal is made, the clerk of the circuit court in which such suit was pending shall include as a part of the record the original certified transcript of the proceedings had before the commissioner when identified by the trial judge instead of a bill of exceptions, which need not be made and filed.

(3) The appeal shall be advanced upon the docket of the appellate court as one of such precedence, and heard as promptly as practicable.

(k) If no claim is interposed, such tobacco products or other property shall be forfeited without further proceedings and the same shall be destroyed or sold as herein provided.

(l) The above procedure is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

(m)

(1) Whenever, in any proceeding under this section, a claim is filed for any vending machine, vehicle, aircraft or boat seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that:

(A) The claimant has an interest in such property which the claimant acquired in good faith; and

(B) The claimant had at no time any knowledge or reason to believe that the seized item was being or would be used in the violation of the laws of the United States or of the state of Tennessee relating to tobacco products.

(2) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by a person who is the holder of a security interest or other claim arising out of a contract or agreement, the commissioner shall not allow the claim unless and until the claimant proves that the claimant has an interest in such property which the claimant acquired in good faith. An interest which is acquired in the ordinary course of business shall be presumed to be in good faith unless the commissioner receives evidence that the holder of the security interest had knowledge, at the time the interest attached, of

the intended illegal use of the vehicle or was a co- conspirator in furtherance of the illegal activity. A holder of a security interest which is other than a natural person shall be considered a co- conspirator for purposes of this section, if evidence shows that an officer, employee or agent of the holder acting within the scope of employment is a co- conspirator, and the holder either:

(A) Has actual knowledge of the illegal activities of the officer, employee or agent from an individual other than the officer, employee or agent and fails to take appropriate action; or

(B) Has failed to reasonably supervise or monitor the activities of the holder's officer, employee or agent.

(3) In the event the interest of the owner is forfeited as provided in subdivision (m)(1) and the interest of the holder of a security interest is not forfeited as provided in subdivision (m)(2), the commissioner may, at the request of the holder of such interest, return the property to the holder for disposition in accordance with the applicable security agreement or other contract. If the commissioner does not return the property to the holder, the forfeiture shall be subject to the holder's interest.

(4) An owner whose interest is forfeited after being arrested for, or charged with, any felony, shall be ineligible to purchase the property from, or to bid at any sale of the property by, the commissioner or any seizing agency. The owner whose interest is forfeited after being arrested for, or charged with, any felony, shall also be ineligible to redeem the property from, or to bid at any sale of the property by, any holder of a security interest acting pursuant to the agreement contract or title 47, chapter 9.

§ 67-4-1022. Every person engaged in the activity within this state of billing, collecting

for, distributing or selling cigarettes or tobacco products through the device, plan, scheme, or artifice, commonly known as the drop shipment plan or system, shall make a complete and itemized report, giving the name and address of purchaser within twenty-four (24) hours of the receipt or taking of the order, and shall pay the tax and affix the stamps on the cigarettes or tobacco products before delivery.

§ 67-4-1023. Any common carrier transporting cigarettes or tobacco products to a point within this state who, for whatever reason, does not deliver to the consignee all of the cigarettes or tobacco products indicated on the bill of lading shall be liable for the tax imposed under this part on all nondelivered products, unless proof deemed satisfactory to the commissioner is furnished showing that the products were not sold or consumed in this state.

§ 67-4-1024.

(a)

(1) It is unlawful for any person to engage in the business of selling, distributing or handling cigarettes or tobacco products without the license herein required, or after the license herein required has been revoked, or for any person to violate any rule or regulation promulgated or prescribed by the commissioner under the authority herein vested in the commissioner.

(2) A violation of subdivision (a)(1) is a Class A misdemeanor.

(b)

(1) It is unlawful for any person to sell or to possess for the purpose of sale, gift, use or consumption, or to transport in violation of this part, any cigarettes to which the tax stamps are not affixed, where such stamps are required to be affixed under the provisions of this part, and any tobacco products upon which tax has not been paid in a manner other than through the affixation of tax stamps where, under provisions of this part, it is provided that it shall be paid

in such other manner.

(2) A violation of subdivision (b)(1) is a Class A misdemeanor.

(3) Any person unlawfully having in such person's possession over twenty-five (25) cartons of unstamped cigarettes or over ten (10) boxes of cigars of fifty (50) cigars each in violation of any provisions of this part commits a Class E felony.

(c) In addition to any other penalty provided by law, it shall be a Class D felony for anyone, with intent to defraud Tennessee, to fail to comply with any requirement with respect to cigarettes of this part or regulations prescribed thereunder.

(d) In addition to any other penalty provided by law, it shall be a Class E felony for anyone knowingly to violate any provision with respect to cigarettes of this part or of regulations prescribed thereunder.

(e) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by a cigarette manufacturer or importer shall result in the seizure of the product and related machinery by the department or any law enforcement agency and shall be punishable as follows:

(1) A first violation involving a total quantity of less than two (2) cartons of cigarettes shall be punishable by a fine of one thousand dollars (\$1,000) or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both.

(2) A subsequent violation involving a total quantity of less than two (2) cartons of cigarettes shall be punishable by a fine of five thousand dollars (\$5,000) or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both, and shall also result in revocation by the department of the cigarette manufacturer or importer license.

(3) A first violation involving a total quantity of two (2) cartons of cigarettes or more shall be punishable by a fine of two thousand dollars (\$2,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both.

(4) A subsequent violation involving a quantity of two (2) cartons of cigarettes or more shall be punishable by a fine of fifty thousand dollars (\$50,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both, and shall also result in the revocation by the department of the cigarette manufacturer and importer license.

For purposes of this section, counterfeit cigarettes include cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit cigarette seized by the board shall be destroyed.

§ 67-4-1027.

(a)

(1) The commissioner of revenue may issue to any cigarette distributor licensed pursuant to § 67-4-1015, a request for information about cigarette units sold in Tennessee.

(2) Any cigarette distributor licensed pursuant to § 67-4-1015, shall comply with a request for information issued by the commissioner of revenue pursuant to subdivision (a)(1) within thirty (30) days of receipt.

(3) "Cigarette" has the same meaning as ascribed in § 47-31-102(4).

(4) "Units sold" has the same meaning as ascribed in § 47-31-102(10).

(b) The commissioner of revenue may, after providing notice and an opportunity for a hearing under § 67-1-105, suspend or revoke the license of any cigarette distributor

or impose a civil penalty or other sanctions for failure to comply with the provisions of this section. The commissioner may attempt to resolve proposed sanctions through an informal conference before a hearing is held under § 67-1-105.

(c) The commissioner of revenue may from time to time make, promulgate, amend and rescind such rules as are necessary to carry out the provisions of this section. All rules provided for in this part shall be adopted, promulgated and contested as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 67-4-1029.

(a) In addition to any other penalty provided under this part, whoever with respect to cigarettes omits, neglects, or refuses to comply with any duty imposed upon him by this part, or to do, or cause to be done, any of the things required by this part, or does anything prohibited by this part, shall, in addition to any other penalty provided in this part, be liable to a penalty of one thousand dollars (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

(b) Whoever fails to pay any tax imposed on cigarettes by this part at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this part, be liable to a penalty of five (5) times the tax due but unpaid.

(c) All cigarettes which are held for sale or distribution within the borders of Tennessee in violation of the requirements of this part shall be forfeited to Tennessee. All cigarettes forfeited to Tennessee under this part shall be destroyed.

§ 67-4-1030.

(a) As used in this section:

(1) "Adult" means a person who is at least the legal minimum purchase age.

(2) "Consumer" means an individual who is not a cigarette retail dealer or a licensed cigarette distributor. Such term shall also include any person, including a cigarette retail dealer or licensed distributor, who purchases cigarettes for personal consumption.

(3) "Delivery sale" means any sale of cigarettes to a consumer in the state where either:

(A) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or

(B) The cigarettes are delivered by use of the mails or other delivery service.

A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state.

(4) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(5) "Department" means the department of revenue.

(6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in the state.

(7) "Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

(8) "Person" means the same as that term is defined in § 67-4-1001.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, air bills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(b)

(1) No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the state.

(2) Each person accepting a purchase order for a delivery sale shall comply with:

(A) The age verification requirements set forth in subsection (c);

(B) The disclosure requirements set forth in subsection (d);

(C) The shipping requirements set forth in subsection (e);

(D) The registration and reporting requirements set forth in subsection (f);

(E) The tax collection requirements set forth in subsection (g); and

(F) All other laws of the state generally applicable to sales of cigarettes that occur entirely within the state, including, but not limited to, those laws imposing: (i) excise taxes, (ii) sales taxes, (iii) license and revenue-stamping requirements, and (iv) escrow payment obligations as set forth in §§ 47-31-101 to 47-31-103.

(c)

(1) No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless such person prior to the first delivery sale to such consumer:

(A) Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal

minimum purchase age, and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least eighteen (18) years of age. Such statement shall also confirm (i) that the prospective consumer understands that signing another person's name to such certification is illegal, (ii) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal, (iii) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state, and (iv) that the prospective consumer wants to receive mailings from a tobacco company;

(B) Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subdivision (A) against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

(C) Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of subsection (d); and

(D) In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by check.

(2) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

(d) The notice required under subdivision (c)(1)(C) shall include:

(1) A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (c); and

(3) A prominent and clearly legible statement that cigarette sales are subject to tax under § 67-4-1004, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(e)

(1) Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

(A) Shall include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows:
"Cigarettes: Tennessee Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(B) Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require (i) the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that he is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal

minimum purchase age shall be required only if such individual appears to be under twenty-seven (27) years of age; and

(C) Shall provide to the delivery service retained for such delivery sale evidence of full compliance with subsection (g).

(2) If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, then such person shall comply with all requirements of this article applicable to a delivery service and shall be in violation of the provisions of this article if he fails to comply with any such requirement.

(f)

(1) Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

(2) Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(A) The name and address of the consumer to whom such delivery sale was made;

(B) The brand or brands of the cigarettes that were sold in such delivery sale; and

(C) The quantity of cigarettes that were sold in such delivery sale.

(3) Any person that satisfies the requirements of section 376 of title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

(g) Each person accepting a purchase order for a delivery sale shall collect and remit to the department all cigarette taxes imposed by the state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise), that such taxes already have been paid to the state.

(h)

(1) Except as otherwise provided in this section, a first violation of any provision of this chapter shall be punishable by a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of this article shall be punishable by a fine of five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater.

(2) Any person who knowingly violates any provision of this article, or who knowingly and falsely submits a certification under subdivision (c)(1)(A) in another person's name, shall, for each such offense, be fined ten thousand dollars (\$10,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years, or both.

(3) Any person failing to collect or remit to the department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five (5) times the retail value of the cigarettes involved.

(4)

(A) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this article shall be forfeited to the state and destroyed.

(B) All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the state, violates any of the requirements of this article, shall be forfeited to the state.

(i) The attorney general or his designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in the state to prevent or restrain violations of this article by any person, or any person controlling such person.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.